

Louisiana Secretary of State Positioned to Expand the Use of Standard Forms for Business Filings

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On May 29, 2019, Governor John Bel Edwards signed into law the first series of bills of the regular legislative session for 2019. Included amongst these acts was Act No. 19, an act that will affect all Louisiana organizations that are registered with the Louisiana Secretary of State (the "SOS") and might give Louisiana corporate and company law practitioners heartburn upon a cursory review. The sizable act, which totals 28 pages, amends 45 separate statutes and enacts an additional 13.

Notably, 2019 Act No. 19 now authorizes the SOS to "prescribe and furnish" forms for each and every corporate, nonprofit, partnership, and limited liability company agreement, instrument, or document that must be filed with the SOS. Forms that may now be prescribed and furnished by the SOS include articles of organization and initial reports, articles of incorporation, contracts of partnership, articles of amendment, articles of restatement, annual reports, agreements and certificates of merger, and articles and certificates of dissolution.

The SOS's new authority, however, is not a vast departure from the authority previously bestowed upon the office. On January 1, 2018, 2016 Act No. 554 went into effect providing the SOS with the authority to establish an online filing system. As part of this online filing system, the SOS was authorized to "implement and establish procedures and systems for secure online form filing for the filing of *any* instrument required under [Title 12 Corporations and Associations]." La. R.S. § 12:1701(C)(1) (emphasis added).

Were the SOS to mandate use of online form filings, a number of substantive and practical issues would present themselves. From a substantive perspective, the forms would need to be scrutinized closely to determine whether additional provisions are needed apart from those that are included on the form. From a practical perspective, documents to be filed with the SOS could no longer be executed in advance, which may create complications affecting the mechanics of closing mergers and acquisitions and other transactions. Practical issues could also arise concerning attorneys' or paralegals' authority to electronically execute documents on their clients' behalf that are to be filed with the SOS. Other practical issues include formatting matters and character limits, among others.

Since Act No. 554 went into effect, the SOS has gradually been introducing its online filing system known as GeauxBiz. Fortunately for Louisiana organizations, the SOS has been very receptive to feedback from corporate and company law practitioners. Most importantly, although GeauxBiz initially mandated use of certain online forms, such as articles of organization or articles of incorporation, the system now allows users to upload pdf versions of executed documents for filing, thereby providing an alternative alleviating many of the concerns discussed above.

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While the use of form filing by businesses can have cost-saving benefits, there are disadvantages to using the form that may not be readily apparent. For instance, in filing articles of organization for limited liability companies, company counsel often advise clients to include language providing additional limitations on the liability of the company's members and managers. Such language is not included in the SOS form articles of organization. For corporations that desire to issue multiple classes of shares of stock, the corporation is required to set forth in its articles of incorporation each class's respective rights. This language is likewise not included on the form articles of incorporation. For nonprofit corporations, the Internal Revenue Service will be looking for specific language in the nonprofit corporation's articles of incorporation in determining whether to grant tax-exempt status. Again, this language is not included in the form nonprofit articles of incorporation.

In order to better position your organization for success, businesses should seek the advice of experienced corporate and company counsel in navigating these issues.